

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

William Vazquez,)	
)	
Pro Se Plaintiff,)	
)	
v.)	NO. 07 CV 6679
)	
Village of Bensenville and)	Judge Castillo
County of DuPage,)	
)	Mag. Judge Keys
Defendants.)	

**DEFENDANT'S, VILLAGE OF BENSENVILLE, MOTION TO
SET ASIDE DEFAULT**

NOW COMES the Defendant, VILLAGE OF BENSENVILLE (hereinafter the "Village"), by and through one of its attorneys, Phillip A. Luetkehans of Schirott & Luetkehans, P.C., and, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, hereby moves this Court for relief from the order of default entered against it on January 29, 2008 and in support thereof states as follows:

1. On or about January 21, 2008, the Village filed its Appearance of counsel and Motion for Enlargement of Time in Which to Answer or Otherwise Plead and scheduled said motion for hearing on January 29, 2008.
2. Through inadvertence, the January 29, 2008 was misdocketed by counsel for the Village and due to this mistake, counsel for the Village did not appear in Court on that date.
3. On January 29, 2008, due to counsel's failure to appear, Plaintiff's oral motion for default was granted, and the Village was found in default and its Motion for Enlargement of Time in Which to Answer or Otherwise Plead was denied.

4. This motion for relief from the Court's Order was filed one day after the Court's order of default.

5. Additionally, Plaintiff will not be unduly prejudiced by the Court granting relief from its order of default, and it would be in the interests of justice for the Court to grant such relief and allow the Village its day in court.

6. The Village possesses meritorious defenses to Plaintiff's Complaint and would be severely prejudiced if it was prevented from raising said defenses.

7. The Affidavit of Attorney Phillip A. Luetkehans is attached hereto in support of this motion.

WHEREFORE, the Defendant, VILLAGE OF BENSENVILLE, prays this Honorable Court for entry of an order:

A. vacating the order of default entered against Defendant, VILLAGE OF BENSENVILLE, on January 29, 2008;

B. granting Defendant, VILLAGE OF BENSENVILLE, time within which to answer or otherwise plead to Plaintiff's Complaint; and

C. any other relief this Court deems just and equitable.

/s/-----Phillip A. Luetkehans-----

One of the Attorneys for Defendant
Village of Bensenville

E-filed: January 31, 2008

Phillip A. Luetkehans, #6198315
Robert W. Funk, #6237110
Brian J. Armstrong, #06236639
SCHIROTT & LUETKEHANS, P.C.
105 East Irving Park Rd.
Itasca, IL 60143
630-773-8500

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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William Vazquez,)	
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Pro Se Plaintiff,)	
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vi.)	NO. 07 CV 6679
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Village of Bensenville and)	Judge Castillo
County of DuPage,)	
)	Mag. Judge Keys
Defendants.)	

AFFIDAVIT OF PHILLIP A. LUETKEHANS

Your Affiant, PHILLIP A. LUETKEHANS, being duly sworn under oath, deposes and states as follows:

1. I am lead trial counsel for Defendant, VILLAGE OF BENSENVILLE (hereinafter the "Village"), in the captioned matter.

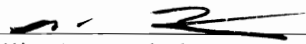
2. On or about January 21, 2008, I caused the Appearance of Brian J. Armstrong, Robert W. Funk and my Appearance to be filed on behalf of the Village in this District Court along with the Village's Motion for Enlargement of Time in Which to Answer or Otherwise Plead to Plaintiff's Complaint.

3. I caused the Motion for Enlargement of Time to be scheduled on this Honorable Court's docket for January 29, 2008.

4. Through inadvertence, I misdocketed the Court date in my calendar and, accordingly, failed to appear in Court on behalf of the Village on that date.

5. If called to testify at the trial or hearing of this cause, I could competently testify to the foregoing facts upon my personal knowledge and belief.

Further, Affiant saith not.


Phillip A. Luetkehans

SUBSCRIBED and SWORN to before me

this 31st day of January, 2008.


Notary Public

